

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

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|---|---|----------------------------------|
| Richard Keith Poe, # 259297, |) | |
| |) | |
| Plaintiff, |) | C/A No. 0:07-1332-CMC-BM |
| |) | |
| v. |) | |
| |) | |
| Warden Eagleton Evans Correctional |) | |
| Institution; Jon Ozmint, Director SCDC; |) | |
| Cynthia Mims, Branch Chief; |) | REPORT AND RECOMMENDATION |
| Mr Baker, Tyger River Classification; |) | |
| Mr Bethea, Evans Correctional |) | |
| Classification; South Carolina |) | |
| Department of Corrections, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

This action has been filed by the Plaintiff, pro se, pursuant to 42 U.S.C. § 1983. On August 7, 2007, Plaintiff filed a document which has been docketed as a motion for entry of a default judgment against the Defendants (Court Document No. 35). In this “motion”, Plaintiff asserts that the Defendants were served with copies of the summons and Complaint on June 28, 2007, that more than thirty (30) days have elapsed since that date with no responsive pleading having been filed, and that the Defendants are therefore in default. However, the docket of this case reflects that the Defendants filed their answer to the Plaintiff’s Complaint on July 16, 2007 (Court Document No. 31).

Therefore, it is recommended that the Plaintiff’s motion for a default judgment in this

case be **denied**.

The parties are referred to the Notice Page attached hereto.



Bristow Marchant
United States Magistrate Judge

Columbia, South Carolina

August 16, 2007



Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).